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Consideration of the additional international legal instrument against trafficking in persons, especially women and children

Proposals and contributions received from Governments

Addendum

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* A/AC.254/29.

II. Proposals and contributions received from Governments

Cameroon*

[Original: French]

Article 17: Entry into force

Insert the word "twentieth" in the square brackets, thereby bringing the draft Protocol into line with the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, which contains the same provision.

China**

[Original: English]

Article 4: Assistance for and protection of victims of trafficking in persons

Paragraph 6

1. Paragraph 6 should read as follows:

"6. States Parties shall ensure international cooperation to assist women and children [persons], especially from developing countries, in their repatriation and reintegration, in particular by providing financial aid."

New article 10 bis

2. After article 10, add a new article to read as follows:

"*Article 10 bis*
"*Measures to eliminate trafficking in women and children [persons]*

"1. States Parties shall, through bilateral and multilateral cooperation, take such measures as they deem effective to eliminate the consumer market that nurtures transnational trafficking in women and children [persons, especially women and children].

"2. States Parties shall ensure the strengthening of international cooperation to eliminate the root causes of the vulnerability of women and children [persons, especially women and children,] to such trafficking, such as poverty and underdevelopment."

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* Amendment previously issued in document A/AC.254/5/Add.19.

** Amendments previously issued in document A/AC.254/5/Add.19.

Colombia*

[Original: Spanish]

Article 5: Status of the victim in the receiving State

Paragraph 2

1. The following wording is suggested for paragraph 2:

> "2. Each State Party shall give appropriate consideration to humanitarian and support factors in determining the status of migrant of such a victim in its territory when it is the receiving State."

2. In the above text, the word "compassionate" has been replaced with the word "support", since the latter term would be more appropriate bearing in mind that the notion of support would be consistent with the victim assistance and protection measures adopted under the Protocol, such as those in articles 4 and 7. Also, the proposed text stipulates that the status of the victim is that of migrant and not any other status, thus preventing the victim from being liable to any form of punishment by reason of international trafficking.

Article 5 bis: Seizure and confiscation of gains

3. The following wording is suggested:

> "States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of property, instrumentalities and profits derived from the offences described in this Protocol, in conformity with individual guarantees enshrined in their domestic legislation. The proceeds from confiscation shall be used to defray the costs of providing due assistance to the victim."

4. In the suggested wording, the phrase "where deemed appropriate by States Parties and as agreed by them" has been deleted. This is because agreements between States Parties would relate only to cooperation measures for the detection of offences or the confiscation of property, which would not follow from the proposed text.

5. It is felt that the article should refer expressly to confiscation of property and instrumentalities that is achieved through cooperation between States and to the possibility of sharing such proceeds.

Holy See**

[Original: English]

Article 4: Assistance for and protection of victims of trafficking in persons

Paragraph 5

1. Replace paragraph 5 with the following:

> "5. Each State shall endeavour to provide for the physical safety of victims and witnesses of crimes covered by this Protocol while they are within its territory,

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* Amendments previously issued in document A/AC.254/5/Add.19.

** Amendments previously issued in document A/AC.254/5/Add.19.

as well as for the protection of their family members by fostering cooperation with the countries where the family members reside."

Paragraph 6

2. Add an additional subparagraph to read:

"(...) Conversion of counterfeited proceeds and instruments of trafficking into educational and social programmes in favour of victims."

3. Add the following additional paragraphs after paragraph 6:

"(...) Each State shall ensure the benefits provided for by the Convention to victims of crime, independently of their ability to furnish relevant elements to the judicial inquiry;

"(...) Each State Party shall consider implementing measures, in cooperation with non-governmental organizations and local communities, to provide for the physical, psychological and social recovery and, when requested, spiritual assistance of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self-respect and dignity, as well as their education and employment opportunities, in a manner appropriate to their age, gender and special needs;

"(...) Each State Party shall endeavour to provide assistance to children removed from forced labour and to reintegrate them into social life, by ensuring to them free primary education and informal education and by supporting their families;

"(...) Each State Party shall endeavour to develop, in cooperation with countries of origin or habitual residence of victims, programmes for the social reinsertion of victims in order to prepare them for return or to assist them once they have returned to their country of origin;

"(...) Each State Party shall consider promoting training programmes for public and voluntary agents working for the rehabilitation of victims of trafficking."

Article 5: Status of the victim in the receiving State

Paragraph 1

4. Add the words "and to have access to education and employment" after the words "to remain in their territories".

Article 6: Repatriation of victims of trafficking in persons

Paragraph 4

5. Add the words "after the end of judicial procedures against traffickers, unless the return would involve danger to the life of the victim," after the words "without proper documentation".

Italy*

[Original: English]

1. Italy would like to strengthen the provisions concerning social assistance to and protection of victims. It is therefore proposed to devote an article to "Protection of human rights and social assistance" and a separate article to "Fair treatment and protection of trafficked persons". A more detailed version of article 5, related to residence status, is also proposed. The Italian proposals incorporate language from the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (The Hague, 24-26 April 1997).

2. Articles 3 *bis*, 4 and 5 should read:

"Article 3 bis

"Protection of human rights and social assistance

"1. States Parties shall protect the human rights of trafficked persons, as defined in the Universal Declaration of Human Rights[1] and the International Covenant on Civil and Political Rights,[2] and ensure that they may be exercised without discrimination on any ground such as race, colour, sex, language, religion, (disability, age, sexual orientation),[3] political or other opinion, national or social origin, property, birth or other status.[4]

"2. In addition to measures provided pursuant to article 4 of this Protocol, each State Party shall consider providing, in cooperation with non-governmental organizations, as appropriate:

"(a) Safe housing;

"(b) Counselling and information, in the mother language of the trafficked persons or in another language they can speak and understand, in particular as regards their legal rights;

"(c) Material, psychological and economic assistance;

"(d) Work, education and training opportunities.

"Article 4

"Fair treatment and protection of trafficked persons

"1. [*Identical to article 4, paragraph 1*].

"2. Each State Party shall endeavour to provide, as appropriate, before, during and after all criminal, civil or other legal proceedings:

"(a) [*Identical to article 4, paragraph 2 (a)*];

"(b) [*Identical to article 4, paragraph 2 (b)*];

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* Amendments previously issued in document A/AC.254/5/Add.19.

[1] General Assembly resolution 217 A (III).

[2] See General Assembly resolution 2200 A (XXI), annex.

[3] Language from article 13 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts.

[4] Including their status as victims of trafficking, as illegal migrants or prostitutes.

"(c) Appropriate measures to protect trafficked persons who act as a witness and, where necessary, their families living on its territory;

"(d) A change of identity, where necessary, if the threat is extremely serious.

"3. States Parties are encouraged to develop bilateral and multilateral agreements aimed at protecting trafficked persons and their families in countries of origin, transit and destination.

"4. In addition to measures provided pursuant to article 8 of this Protocol, States Parties shall to the extent possible under their domestic law:

"(a) Provide for the notification of victims, upon their request, of any form of release from custody or detention of persons arrested for or convicted of trafficking;

"(b) Develop methods of investigation, detection and gathering of evidence that minimize intrusion into the private life of the trafficked person and are free from gender bias;

"(c) Establish, whenever possible, specialized police and prosecutorial units trained to deal with gender issues and sensitivities of the victim of trafficking, especially children.

"Article 5
"Residence status of trafficked persons

"1. In addition to measures provided pursuant to article 4 of this Protocol, each State Party shall consider enacting immigration laws or other measures that will grant the trafficked person, in appropriate cases, temporary or permanent residence status, including the possibility of gainful employment.

"2. [*Identical to article 5, paragraph 2*].

"3. A trafficked person shall be given the opportunity to produce evidence in support of a claim that repatriation could seriously endanger his or her life."

Libyan Arab Jamahiriya*

[Original: Arabic]

Article 2 bis
Definitions

For the purposes of this Protocol, the following definitions shall apply:

(a) 'Child' shall mean any person under eighteen years of age;

(b) 'Trafficking in persons' shall mean any act carried out or initiated by a criminal organization, jointly or through any of its members, for an illicit purpose or goal, that involves:

(i) Promoting, facilitating or coordinating the holding, transferring or hiding of a child or a woman, with or without his or her consent, repeatedly or on one occasion, whether on behalf of another party or otherwise, for profit or otherwise, in order to

* Amendment previously issued in document A/AC.254/5/Add.19.

force the person to perform, not to perform or to tolerate an act or to subject him or her unlawfully to the power of another person;

(ii) Maintenance of a man, woman or child under the threat of some penalty in order to demand the performance of forced or compulsory labour to which the person has not voluntarily consented or in order to force the person, in accordance with custom or agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

(iii) The prostitution or other form of sexual exploitation of a woman or a child, even with the consent of that person;

(iv) Any means of production, distribution or importation, in their present or future form, of graphic or audio-visual material focused on the sexual conduct of women or children or on the genitals of such persons;

(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

(vi) Acts aimed at rendering uncertain, changing or annulling the marital status of a woman, whether for payment or not or for the promise thereof, whether in accordance with a traditional or customary practice or not and with or without the use of threats or abuse of authority;

(vii) Extraction of body organs or organic tissue; [and]

(viii) Reduction to slavery, servitude or other similar condition.

Mexico*

[Original: Spanish]

Article 3: Obligation to criminalize

1. The following new wording is proposed:

"1. States Parties that have not done so shall adopt such legislation and other measures as are necessary to establish as criminal offences the conduct referred to in article [...] of this Protocol and to impose penalties that take into account the grave nature of such conduct.

"2. To the extent permitted by domestic law, intentional participation in any of the unlawful acts referred to in article [...] of this Protocol shall also be punishable."[1]

Article 4: Assistance for and protection of victims of trafficking in persons

Title

2. It is proposed that the title of article 4 be replaced with the following: "Compensation and restitution to victims".

3. The following new wording is proposed:

* Amendments previously issued in document A/AC.254/5/Add.19.

[1] The wording of this paragraph is based on that of article 4 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV), annex).

"1. In appropriate cases and to the extent permitted by domestic law, each State Party:

"(a) Shall prevent any form of punishment from being imposed on persons, in particular women and children, who are victims of international trafficking;

"(b) Shall ensure that victims of trafficking in persons, especially women and children, receive adequate protection;

"(c) Shall inform victims of crimes covered by this Protocol about the relevant court and administrative proceedings;

"(d) Shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons;

"(e) Shall assist victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence;

"(f) Shall provide appropriate housing, economic assistance and psychological, medical and legal support for victims of crimes covered by this Protocol;

"(g) Shall provide appropriate housing, education and care for children in governmental custody;

"(h) Shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

"2. In addition to the measures provided for in article 7 of this Protocol, each State Party that has not already done so shall enact immigration laws and/or adopt legislative or administrative measures that will enable identified victims of trafficking within its territory, after due consideration is given to humanitarian factors, to remain in its territory temporarily or, where appropriate, permanently."[2]

Article 5: Status of the victim in the receiving State

4. It is proposed that the text of article 5 be merged with that of article 4 as indicated above. Article 5 would thus be deleted.

Article 5 bis: Seizure and confiscation of gains

5. It is proposed that article 5 *bis* be deleted.

Article 6: Repatriation of victims of trafficking in persons

6. It is proposed that article 6 be replaced by the following:

[2] Text based on the proposal of France and the United Kingdom of Great Britain and Northern Ireland, amended by Mexico and Morocco.

"Article 6
"Repatriation of victims of trafficking in persons

"1. Each State Party agrees to facilitate and accept the return of a victim of trafficking in persons who is a national of that State Party or who has the right of abode in the receiving State.

"2. Each State Party shall agree to facilitate the repatriation of victims of such trafficking who desire to be repatriated or who may be claimed by persons exercising authority over them or whose repatriation is ordered in conformity with the domestic law of each State.[3]

"3. Repatriation shall take place only after agreement is reached with the State of destination as to the identity and nationality of the persons concerned, as well as to the place and date of arrival at frontiers. Each Party to this Protocol shall facilitate the passage of such persons through its territory.[3]

"4. [*Identical to article 6, paragraph 2*].

"5. In order to facilitate the return of victims of such trafficking who are without proper documentation, each State Party shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable such a victim who is a national of that State Party or who has the right of abode in the receiving State to re-enter its territory."

Article 7: Law enforcement measures

7. It is proposed that the title and text of article 7 be replaced with the following:

"Article 7
"Cooperation

"1. Within the scope of their respective areas of jurisdiction and within the framework of their domestic law, States Parties shall cooperate with one another in preventing and combating international trafficking in persons.

"2. For the purposes of paragraph 1 of this article, States Parties shall exchange information and establish systems of judicial cooperation that will contribute to improving the prevention and combating of unlawful conduct relating to international trafficking in persons. Moreover, they shall cooperate closely with a view to providing adequate protection and assistance for victims of such trafficking."

Article 8: Border measures

8. It is proposed that the title and text of article 8 be replaced with the following:

"Article 8
"Training

"All States Parties shall provide law enforcement, immigration or other relevant officials with specialized training in the prevention of international trafficking in

[3] The wording of this paragraph is based on that of article 19, paragraph 2, of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

persons and the treatment of victims of such trafficking, including protection of their human rights, or shall strengthen existing specialized training in that area."

Morocco*

[Original: French]

Article 5: Status of the victim in the receiving State

Paragraph 1

It is proposed that paragraph 1 of article 5 be replaced by the following:

"1. In addition to measures provided for pursuant to article 7 of this Protocol, each State Party that has not done so shall enact immigration laws and/or adopt legislative and administrative measures that permit identified victims of trafficking in persons, after due consideration is given to humanitarian and compassionate factors, to remain in its territory temporarily or, in appropriate cases, permanently."

Netherlands**

[Original: English]

Article 2 bis

As mentioned in paragraph 28 of the report of the informal consultations on the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime during the fifth session of the Ad Hoc Committee (A/AC.254/19/Add.1), the Chairman requested the delegation of the Netherlands to submit its proposal to replace the phrase "sexual exploitation" and its definition with a broader definition of slavery for discussion at the sixth session of the Ad Hoc Committee. The following text of article 2 *bis* is submitted pursuant to that request:

"Article 2 bis
"Definitions

"For the purpose of this Protocol:

"(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of abduction, force, fraud, deception, coercion or debt bondage or by giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of slavery, servitude or forced labour. For the purposes of this Protocol, trafficking in persons includes subjecting a child to such trafficking regardless of whether that child has consented;

"(b) 'Slavery' shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;

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* Amendment previously issued in document A/AC.254/5/Add.19.

** Amendment previously issued in document A/AC.254/5/Add.19.

"(c) 'Servitude' shall mean a condition of dependency whereby a person's abuse of power or use of coercion or force restricts the fundamental rights of another person and includes the acts described in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.[1] This definition does not affect the rights, obligations and responsibilities of States, parents and guardians set forth in the Convention on the Rights of the Child;[2]

"(d) 'Forced labour' shall mean [see article 2 *bis* (b) in document A/AC.254/4/Add.3/Rev.4];

"(e) 'Child' shall mean any person under 18 years of age."

Philippines*

[Original: English]

Article 10: Prevention of trafficking in persons

Paragraph 1

1. The Philippines proposes the following amended text:

"1. Each State Party shall establish comprehensive policies, programmes and other measures."

Paragraph 2

2. The Philippines proposes the following amended text for subparagraphs (a) and (b):

"(a) Undertake, including through Governments, non-governmental organizations, intergovernmental organizations, and the private sector, partnerships with communities, especially those at risk of being targeted by traffickers;

"(b) Establish networks for gathering data and promote research, including the compilation of case law on trafficking cases to monitor legal and judicial precedents on trafficking cases internationally;"

Paragraph 3

3. Paragraph 3 should be deleted.

[1] United Nations, *Treaty Series*, vol. 226, p. 3.

[2] General Assembly resolution 44/25, annex.

* Amendments previously issued in document A/AC.254/5/Add.19.

Syrian Arab Republic*

[Original: Arabic]

Article 3: Obligation to criminalize

Paragraphs 1 and 2

1. Add the words ", subject to their fundamental legal principles," after the word "adopt".

Article 17: Entry into force

2. The number of instruments of ratification or accession required to be deposited for the Protocol to enter into force should be the same as the number required for the Convention to enter into force.

Thailand**

[Original: English]

Article 11
Cooperation with non-States Parties

States Parties are encouraged to cooperate with non-States Parties to prevent and punish trafficking in persons and to protect the rights of and care for trafficked persons. To that end, appropriate authorities of each State Party are encouraged to notify, in appropriate cases and when in the best interest of the trafficked person, the appropriate authorities of a non-State Party whenever a victim of such trafficking who is a national of a non-State Party is in the territory of the State Party.

United States of America***

[Original: English]

Article 2 bis
Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of abduction, force, fraud, deception, coercion [, by debt bondage] or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation, forced labour, or [*here would be added any other types of exploitation that the Ad Hoc Committee might agree should be covered by the Protocol*]. For the purposes of this Protocol, trafficking in persons [for the purpose of sexual exploitation] includes subjecting a child to such trafficking regardless of whether the child has consented;

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* Amendments previously issued in document A/AC.254/5/Add.19.

** Amendment previously issued in document A/AC.254/5/Add.19

*** Amendment previously issued in document A/AC.254/5/Add.19.

(b) "Sexual exploitation" shall mean:

(i) Of an adult, [forced] prostitution, sexual servitude or participation in the production of pornographic materials for which the person does not give free and informed consent;

(ii) Of a child, prostitution, sexual servitude or use of a child in pornography;

(c) "Forced labour" shall mean all work or service exacted from any person under the threat or use of force [, directly or indirectly] or through the use of coercion, and for which the person does not give free and informed consent [, except:

(i) In countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(ii) Any work or service not referred to in subparagraph (a) of this article that is normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(iii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iv) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(v) Any work or service that forms part of normal civil obligations of the State concerned; or

(vi) Minor communal services of a kind that, being performed by the members of a community in the direct interest of that community, can therefore be considered normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted with regard to the need for such services;]

(d) "Child" shall mean any person under 18 years of age;

(e) "Sexual servitude" shall mean sexual services exacted from any person under the threat or use of force;

(f) [*Definitions would be added for any additional type of conduct that is to be included in the definition of "trafficking in persons", as well as any other terms in the Protocol that need to be defined.*]